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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the matter of)
)
Advanced Television Systems)
and Their Impact upon the) MM Docket No. 87-268
Existing Television Broadcast)
Service)
)

To: The Commission

COMMENTS OF CENTURY DEVELOPMENT CORPORATION

Century Development Corporation ("Century"), licensee of Television Station KGNS-TV, Laredo, Texas, by its attorneys, hereby submits its comments concerning the digital television ("DTV") allotment and assignment principles proposed by the Commission in the above-captioned proceeding.^{1/} Century's comments address only the potential for interference from current and future Mexican television allotments on border-region domestic television stations and the Commission's responsibility to ensure that the DTV allotment table complies with extant United States-Mexican treaties.

The lengthy Sixth Notice deals with the complex issue of allotments in areas near the Mexican border in a two-sentence footnote:

We also note that some of the channels specified in the draft table are not fully compliant with the existing U.S.-Mexican Agreement. We will work with the Mexican government to clarify the status of DTV allotments in border areas.

^{1/} Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Sixth Further Notice of Proposed Rulemaking, MM Docket No. 87-268, FCC 96-317 (Aug. 14, 1996) ("Sixth Notice").

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Sixth Notice, ¶ 89, fn. 93. This superficial treatment does not begin to deal with the critical issues associated with the possibility of interference to domestic television stations caused by current or future Mexican television allotments and the Commission's responsibilities under two separate treaties with Mexico.^{2/}

Pursuant to these treaties, the Commission must obtain concurrence from the Mexican government for all proposed domestic VHF television allotments within 400 kilometers of the Mexican border and for all proposed domestic UHF television allotments within 320 kilometers of the Mexican border. The treaties provide maximum effective radiated power limits for these allotments and any modifications thereto, as well as specific mileage separation limits for co-channel and adjacent channel stations within the border region. Applications that do not comply with the allotment restrictions in the treaties cannot be accepted for filing because the Commission "is without jurisdiction to waive or to interpret provisions of [the treaties]." NJT Limited Partnership, 4 FCC Rcd 7969 (1989).

The Sixth Notice concedes that some of the border-region proposed allotments do not comply with the treaties. Sixth Notice, ¶89, fn.93. Given the Commission's lack of authority to waive these defects, the Commission must reevaluate the proposed digital table of allotments to ensure that all border-region allotments comply with existing treaties, specifically including the minimum mileage separations. Without such protections, currently

^{2/} U.S.T., TIAS No. 5043 (as amended) (1962) and U.S.T., TIAS No. 10535 (as amended) (1983). Although these Comments focus on Century's concerns with respect to Mexican allotments, similar considerations also would apply with respect to Canadian allotments.

operating NTSC stations in border-regions could be prohibited from making the technical changes, such as changing antenna sites, that are necessary to begin DTV transmission.

Such a result would be completely contrary to the Commission's express desire to facilitate prompt institution of DTV service. Furthermore, border-region stations could be placed at a significant competitive disadvantage by having to comply with a statutorily-imposed maximum effective radiated power lower than that proposed by the Commission for its DTV allotment. Sixth Notice, at ¶¶ 13, 95. This result would be contrary to the public interest as it would deny border stations' viewers the benefits of DTV service.

The Sixth Notice also seeks comment on whether the Commission should adopt a geographic spacing approach or an engineering criteria approach to future allotments and modification of the DTV table. Sixth Notice, ¶¶ 97-99. Century believes that the Commission must adopt a geographic approach in order to remain consistent with the geographic spacing methodology used in the treaties with Mexico and Canada. Generally adopting an electrical interference methodology would not efficiently use all of the available spectrum because allotments permissible under the electrical interference rules might be impermissible due to an unwaivable geographic spacing problem with Mexican or Canadian stations. Thus, under the electrical interference plan, there might be areas near both domestic borders where channels would remain unused.

Finally, while the Commission discusses its proposals for future domestic DTV allotments, it fails to discuss the effect of current or future Mexican allotments on the proposed table. This omission is critical and could adversely affect service to United States viewers in border-regions. In determining how to treat present and future Mexican

allotments, protecting domestic television stations from electrical interference must be a paramount Commission concern. Although interference protection for domestic border-region television stations is dealt with to some extent in the relevant Mexican treaties, these treaties reflect an NTSC environment. With advent of a DTV environment, the Commission must take other steps necessary to ensure that all border-region domestic television licensees are protected from electrical interference from current and future Mexican television allotments. The Sixth Notice, however, does not indicate that consideration has been given to this problem.

CONCLUSION

The Commission's proposed DTV table of allotments glosses over the potential problems inherent in restructuring the domestic television allotments in the U.S.-- Mexican border-region in a manner consistent with both the United States' treaty obligations and the need to ensure optimal NTSC and DTV service to viewers in these areas. The Commission, lacking the ability to waive treaty requirements, must ensure that domestic television allotments comply with the treaties and are fully protected from interference by current and future Mexican television allotments.

Respectfully submitted,

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